

**STATEMENT OF ANNETTE SANDBERG
ACTING ADMINISTRATOR
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**BEFORE THE
SUBCOMMITTEE ON HIGHWAYS, TRANSIT, AND PIPELINES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES**

**REAUTHORIZATION OF THE
FEDERAL MOTOR CARRIER SAFETY PROGRAM**

May 20, 2003

Chairman Petri, Congressman Lipinski, Members of the Subcommittee. It is my pleasure to appear before you today as this Subcommittee considers reauthorization of the motor carrier safety program along with the other surface transportation modes.

Last week when Secretary of Transportation Norman Mineta appeared before this Committee to present the President's reauthorization proposal, he outlined the centerpiece of the Administration's bill—highway safety. We have worked closely in the Department, joining NHTSA and FHWA, to develop our safety proposals. Our collaboration with the other safety agencies is essential because highway safety has many facets and no single solution. If we are to stem the tide of this terrible loss of life on our Nation's highways we all must play a role, combine our knowledge and expertise, and coordinate our program delivery. My colleagues and I share the belief that our programs are complementary rather than competing. We are committed to working together with this Committee to reduce fatalities on our Nation's highways. With your help, we will make much needed changes over this decade to reduce this senseless loss of life.

This Committee demonstrated great leadership in the passage and enactment of the Transportation Efficiency Act for the 21st Century (TEA-21) and the Motor Carrier Safety Improvement Act of 1999 (MCSIA). The changes you crafted in these Acts have reduced fatalities in crashes involving trucks four years in a row, even as travel increased. This is clear and unequivocal progress, and justifies the confidence of your Committee in the impact that FMCSA would have on commercial motor vehicle safety. FMCSA has taken your direction and acted upon it. Despite this progress, much remains to be done. I commit to build on this success and to improve commercial motor vehicle safety by bringing greater efficiency and effectiveness to FMCSA's programs.

ENHANCING OUR SAFETY GRANT PROGRAMS

Overall, TEA-21 and MCSIA provided a solid foundation for our traditional motor carrier safety grant programs—Motor Carrier Safety Assistance Program (MCSAP), Commercial Drivers' License Program (CDL), Border, and the Performance Registration Information System Management (PRISM). In TEA-21, CDL and PRISM were funded from Information System funds, while Border was a set-aside from MCSAP.

We envision these four programs as separate grant programs totaling \$1.4 billion over the six-year authorization.

Motor Carrier Safety Assistance Program Grants

TEA-21 eliminated most earmarks from MCSAP and restructured it to promote performance-based activities. This change provided the needed flexibility to State grantees to allow them to invest in areas of the greatest crash reduction based on their own circumstances. Our State partners conduct roadside inspections, perform compliance reviews, and enforce traffic laws on commercial operations. Reauthorization would continue to support this vital partnership and expand our relationship with States into new areas of compliance. This will enable us to address our future challenges by building on our past success.

While we recommend that most major features of the MCSAP remain unchanged, we believe we can improve MCSAP by amending the traffic enforcement component, improving the performance incentive funding, and providing funding to support new entrant reviews.

The current MCSAP includes an incentive for States to improve safety performance if they demonstrate improvement in any or all of five categories related to reduction of large-truck involved fatal accidents and fatal accident rates, timely upload of CMV inspection and accident data, and verification of CDL information. The Agency proposes to provide 100 percent MCSAP funding to States for performance incentives.

To address unsafe operation of passenger vehicles around large trucks, we seek discretion to fund traffic enforcement. This provision will give participating jurisdictions greater flexibility to use MCSAP funding for traffic enforcement when necessary to reduce large-truck related crashes. Education of the general public about sharing the road with large trucks is important, as well as targeted education to young adults on this subject. All State driving license manuals should reflect this information.

As outlined in MCSIA, a new entrant program to bring motor carriers into compliance with safety regulations at the onset of operations can improve safety. These new entrants, numbering 40,000-50,000 annually, will be targeted to improve commercial motor vehicle safety. Through MCSAP, a Federal-State partnership will be established to implement the New Entrant Program. Overseeing and supporting the conduct of safety audits, establishing baseline data, and implementing a program of regular data collection to assess the progress of the New Entrant Program will enable FMCSA to fulfill its statutory mandate to improve new entrant safety performance. This program will meet the requirements set out in Section 350 of the FY 2002 DOT Appropriations Act as a precondition to opening the Southern border to Mexican commercial vehicles.

Forty-six States have committed to work with us to conduct new entrant safety audits, having agreed to provide approximately 195 of the estimated 262 State and Federal personnel needed. The State personnel will be either new hires or be reassigned

from other law enforcement duties. In FY 2003, these individuals were supported through MCSAP grant funds. Contracted safety auditors were used to make up the balance of staff. Over the reauthorization period these individuals will be supported through MCSAP grant funds. Approximately 67 contracted safety auditors will be used to make up the balance of staff. We plan to hire 32 full-time Federal staff to cover program oversight, including management, review, and approval of the safety audits. We believe this Federal-State partnership, like the traditional MCSAP, will yield significant results.

Commercial Drivers License Grants

The CDL grants provided under TEA-21 were a set-aside from the agency's information system funds. MCSIA provided additional funding when new driver disqualification standards and record-keeping requirements were imposed on States. Improving the accuracy and completeness of driver history records is key to enhanced safety. The driver's license is the main form of personal identification in the United States. Ensuring the bearer of the license is in fact who he or she claims to be depends on a diverse set of security technologies. Particularly in the transportation of hazardous materials, States need current driver licensing technology. Grants under this program will allow States to enhance this technology and continue to upgrade their record-keeping systems. We propose up to a 10% set-aside, which can be provided to States at 100% funding.

We propose increased CDL grant funding for: 1) improving State control and oversight of State licensing agency and third party testing facilities; 2) developing management control practices to detect and prevent fraudulent testing and licensing activities; 3) supporting State efforts to conduct Social Security Number and Bureau for Citizenship and Immigration Services (formerly the Immigration and Naturalization Service) number verification for CDLs; and 4) maintaining the central depository of Mexican and Canadian driver convictions in the U.S., the disqualification of unsafe Mexican and Canadian drivers, and the notification of Mexican and Canadian authorities of convictions and/or disqualifications.

Together, these activities will add to the variety of driver's license technologies for safety and security, and will enhance FMCSA's ability to identify problem drivers.

Performance Registration Information Management System Grants

The PRISM program was pilot-tested in ISTEA and mandated as a new program in TEA-21. Linking safety fitness to vehicle registration at the State level, it identifies high risk carriers based on their actual over the road performance, provides many opportunities for poor performing carriers to improve, actively monitors safety progress, and applies progressively harsher sanctions to those carriers who fail to improve. Under PRISM, identification of the carrier responsible for the safe operation of vehicles is made at the time of vehicle registration. Through the use of a "Warning Letter", thirty percent of the carriers improve their safety performance without Federal intervention. PRISM

provides for immediate, visual identification to law enforcement that the carrier should not be on the road by removing the license plates. As more States become fully operational and suspend vehicle registration in conjunction with Federal out of service orders, vehicles associated with high-risk carriers will be prevented from operating on the road. With 25 participating States, this program does not require long-term Federal maintenance once the State receives its development funds.

Border Enforcement Grants

Border safety activities continue to remain a high priority for FMCSA and the States. Under TEA-21, border operations, both northern and southern, are funded as a 5 percent set-aside from MCSAP. We propose to create a separate grant program to address current and future State needs at the border. In the FY 2002 Appropriations Act, Congress established requirements for opening the U.S.-Mexico border to long-haul commercial traffic. This event alone, when fully realized, necessitates a separate grant program to ensure a stable funding source for State inspectors and operations.

One Congressional requirement for opening the border was that the DOT Inspector General must verify the satisfaction of all statutory conditions. Inspector General Ken Mead concluded that FMCSA has met these requirements, including the hiring and training of enforcement personnel and the establishment of inspection facilities and safety procedures at the southern border. Due to our actions, Secretary Mineta certified that the Department had met the Congressional mandates, providing a basis for the President to lift the moratorium on granting operating authority to Mexican carriers within the interior of the United States in November 2002.

Currently, the Border remains closed because of the 9th Circuit Court ruling that DOT had not conducted the appropriate, in-depth environmental analysis for certain rules designed to satisfy the Congressional requirements. The Court held that the environmental assessment that the agency prepared was inadequate, and that FMCSA should have prepared an Environmental Impact Statement and Clean Air Act Conformity Analysis. The Administration filed an *en banc* appeal of the decision to the 9th Circuit on March 10, which was denied. The Administration is considering appropriate next steps in responding to the ruling. Meanwhile, FMCSA is ready now, and will be ready whenever the border is opened, to ensure the safety of border operations.

Information Systems

Information systems and analysis support all of the agency's safety programs and will underlie our future efforts to improve program delivery. Data collected across the country by Federal safety investigators and State partners from roadside inspections, crashes, compliance reviews, and enforcement activities provide a national perspective on carrier performance and assist in determining enforcement activities and priorities. This allows us to analyze program effectiveness and direct resources in the most efficient and productive manner to improve motor carrier safety.

In TEA-21, this Committee provided essential dedicated funding to improve Federal and State systems of carrier, vehicle, and driver safety records, and enhance State on-line capabilities for roadside enforcement. With this funding we greatly improved the accuracy and timeliness of our inspection and crash data and made this information available on-line to shippers, carriers, and insurance companies. We created new systems to allow motor carriers to register for authority on-line and file the necessary insurance documentation. With long-term funding and authority we can continue our progress and upgrade our ability to identify the high-risk carriers through data improvements.

Regulatory Development

Regulatory development is another fundamental element of FMCSA's compliance and enforcement process. This is an area where greater attention and resources are needed to address all mandated regulations and ensure program performance will not be compromised. Previously, funding for this activity has been obtained by borrowing against other program activities, such as research and technology, requiring the agency to struggle with inconsistent funding streams.

The absence of a consistent funding source causes starts and stops in a process that requires a consistent level of effort for timely completion of regulations and their supporting analyses. For this reason, we are proposing to dedicate funds to our regulatory development program. We will also use our funds to examine alternative regulatory programs. In TEA-21, Congress provided FMCSA with authority to establish exemption and pilot programs under strict safety controls. We now operate a vision exemption program where applications total more than 60 per month. We are approached routinely to consider other alternative programs to our safety regulations. However, these are resource intensive programs with ample Federal oversight responsibilities. We need to approach these activities cautiously.

Medical Review Board and Registry

The authorization for a standing medical review board will provide the agency with much needed expert medical advice on driver qualification standards and guidelines, medical examiner education, and medical research. The members would come from leading medical/academic institutions and serve 3 to 5-year terms. In the past, we have assembled expert medical specialists on an *ad hoc* basis to review the standards and guidelines for qualifying truck and bus drivers. A standing review board will greatly enhance the agency's ability to adopt regulations that reflect current medical advances. Many of the medical standards currently in effect were originally adopted in the 1970s, or earlier.

With over six million commercial drivers under our jurisdiction, we must ensure that only drivers physically qualified to operate a commercial vehicle are doing so. There are tragic examples where this has not been the case. A medical examiner lacking familiarity with our medical criteria certified a Louisiana bus driver with heart and kidney disease who later crashed, killing 22 passengers. A medical examiner registry, as

called for in our proposal, will help FMCSA to provide more comprehensive information on medical practitioners to drivers and carriers. It will help disseminate information to practitioners regarding medical policies and requirements relevant to the physical qualifications of commercial drivers.

A medical registry is necessary to upgrade the quality of CDL driver medical qualification exams. With the registry, we will better monitor the quality and practices of medical examiners. A certification process will ensure that medical examiners are qualified to perform driver physical exams. Establishment of a medical registry of qualified medical examiners would respond to the National Transportation Safety Board, which issued eight safety recommendations in September 2001 recommending that FMCSA establish more comprehensive standards for qualifying medical providers and conducting medical qualification exams.

STRENGTHENING ENFORCEMENT

Enforcement is the centerpiece of our motor carrier safety program. This Committee made much needed improvements to our enforcement program under TEA-21. I believe those changes contributed substantially to the reduction in fatalities that we see today. We propose to expand the toolbox of enforcement techniques, close loopholes that permit unsafe practices, and improve our penalty structure. While there are many such features included in our legislative proposal, I would like to emphasize only a few today, addressing various penalties for motor carrier noncompliance with out-of-service violations and safety record-keeping requirements, improvements to household goods enforcement, and new authority over motor carrier management and operations.

Intrastate Violations

The agency's enforcement reach must extend to the intrastate operations of interstate carriers in order to enhance safety and ensure uniformity in enforcement and oversight responsibilities. At present, our inability to reach intrastate operations represents an artificial line from a safety point-of-view. When our investigators examine a carrier's operations they must discard intrastate safety violations they discover. If an interstate carrier is declared unfit to operate, it may continue to operate solely within a State.

Many interstate motor carriers have substantial intrastate operations. For purposes of safety, it is counterproductive to create two classes of accidents and safety inspection data – one subject to Federal jurisdiction, the other not – when, typically, both involve the same vehicles, drivers, dispatchers, mechanics, and safety management controls and may have the same safety result. In examining a motor carrier's accident and inspection data, it is often difficult, and sometimes impossible, to determine whether the vehicle involved was making an interstate or intrastate trip. We seek to amend this enforcement boundary so that we may take steps to prevent unsafe carriers from operating. Under this proposal, a Federal safety determination of an interstate motor carrier suspends both interstate and intrastate operations. Similarly, a State safety

determination that an intrastate carrier is unfit halts both its intrastate and any interstate operations.

Congress has recognized this limitation in other motor carrier safety programs and has set precedents in eliminating inter/intrastate distinctions in the areas of hazardous materials, drug and alcohol testing, and CDL regulations. In these cases, Federal regulations apply to the full scope of operations. An unfit carrier should not be allowed to operate anywhere.

Oversight of Company Officials

Similarly, we have limited authority over company officials who exhibit continual disregard of safety management practices. We find a few motor carrier managers that order, encourage, and tolerate widespread regulatory violations. When caught, they declare bankruptcy, rename the motor carrier and reshuffle the managers' titles, sell its assets to a pre-existing shell corporation owned and managed by the same people, or otherwise attempt to evade the payment of civil penalties or obscure the identity of the motor carrier and, thus, its safety record. These individuals perpetuate a casual indifference to public safety. Although the total number of such officials is small, their actions create a risk disproportionate to their numbers.

To address this practice we seek authority to suspend, amend, or revoke the registration of a for-hire motor carrier if any of its officers has engaged in a pattern or practice of avoiding compliance, or concealing non-compliance, with Federal motor carrier safety standards. This provision is intended to address those few motor carrier officers who have shown unusual and repeated disregard for safety compliance and would be used only in the most serious cases.

Household Goods Enforcement

I know that the Chairman and Members of this Committee have noticed an increase in the number of constituent complaints regarding unscrupulous household goods carriers. The letters we receive, as well as the calls coming into the FMCSA hotline, have been increasing. FMCSA receives thousands of consumer complaints annually. Currently, the Agency has three full-time commercial investigators devoted to the Household Goods Enforcement and Compliance program and has budgeted for more for FY2004.

While the household goods industry as a whole performs over a million successful moves annually, a small group of unscrupulous people scattered over a handful of States has used this industry to bilk unsuspecting consumers of their hard earned money. The complaints from the American moving public have reached significant proportions.

We need to establish a more visible enforcement program through increased investigations, and a more robust outreach effort to reduce the number of consumer complaints filed against household goods carriers and brokers. Our efforts will also be

aimed at increasing consumer awareness to allow shippers to make better-informed decisions before they move across State lines.

Household goods carriers operating in interstate commerce are required to have or participate in an arbitration program as a condition of their registration with FMCSA. The arbitration programs must comply with the requirements of 49 U.S.C. 14708, and the carrier must submit to binding arbitration upon shipper request for cargo damage or loss claims of \$5,000 or less. Seventy-five percent of the complaints we receive pertain to loss and damage claims.

FMCSA intends to conduct an extensive study of existing Household Goods Dispute Settlement Programs and alternative arbitration programs in the household goods moving industry. We need this critical information to determine the extent of the problem, to determine effective strategies and countermeasures, and to evaluate the effectiveness of these programs in resolving loss and damage disputes and claims between shippers and carriers.

We cannot continue to address these consumer issues on our own—safety is our primary business. Even with additional resources, household good disputes will likely increase. As such, we seek authority for State Attorneys General to enforce Federal household goods regulations against interstate household goods carriers. This approach has been successful in increasing State enforcement of Federal telemarketing regulations. We believe it will help to reduce abusive practices among movers of household goods.

Out-of-Service Orders and False Records

The out-of-service order is one of the tools we have to prevent a motor carrier from operating when it is unfit. Once issued, the order is designed to stop a carrier from continuing to operate until it comes into compliance. In some instances, carriers violate these orders and consider the safety fines as a “cost of doing business.” This mentality shows a flagrant disregard for the safety of the highway users. Currently, carriers who knowingly require or authorize drivers to violate the order are subject to a maximum civil penalty of only \$16,000. To be effective, the penalty should be harsh to ensure compliance with the order. If a carrier knowingly and willfully requires a driver to violate an order, we propose a fine of \$100,000, up to one-year imprisonment, or both. If a driver violates an order, there should be a standard of progressive fines and disqualification standards.

False records or companies that hamper the ability of our safety investigators to access safety records can limit the effectiveness of our enforcement program. A few carriers will deliberately impede our investigators by refusing access to records, buildings, or equipment or falsifying records to obscure safety violations. To deter those who refuse access to their records, we propose a \$500 per day fine, up to a maximum of \$5,000 for the same violation. Increasing the current fines for false records to \$1,000 per day, up to a maximum of \$10,000 per violation, would stem this practice.

FUNDAMENTAL BUILDING BLOCKS FOR PROGRAM DELIVERY

When this Committee established the FMCSA under the Motor Carrier Safety Improvement Act of 1999, you wanted a results-oriented and performance-driven safety organization. FMCSA shares that vision and wants to build an organization in this reauthorization that maximizes program safety benefits while utilizing an efficient delivery system.

Research and Technology

FMCSA's ability to integrate research and technology into our regulatory and enforcement programs has contributed to sound policy-making. MCSIA did not establish separate authority for a FMCSA research and technology program. We believe this authority is fundamental to ensuring that our future safety decisions are based on sound research. Research and technology supports life-saving and injury-reducing projects that create qualified and alert drivers, smart commercial vehicles, smart roadside facilities, secure hazardous material shipments, and expanded partnerships with States and universities.

The primary goal of FMCSA research and technology activities is to improve commercial vehicle safety and security by promoting studies on issues most frequently related to the cause of crashes and loss of life. Based on regulatory and enforcement needs and on input from stakeholders, industry, government, and academia, we have investigated, among others, driver fatigue and health issues, vehicle stability, carrier and shipper safety management, and a variety of vehicle-based safety technologies. We have actively participated in research activities sponsored by the Transportation Research Board and have cooperated with numerous transportation research centers and laboratories in the U.S. and abroad. FMCSA's role in the transportation research community will increase as we expand our partnerships beyond traditional roles and participate in and sponsor top-level national conferences and workshops. Finding effective solutions and harnessing emerging technologies does not happen without a solid research foundation.

Section 1704 of the Department's Reauthorization proposal would provide Federal ITS deployment funds each fiscal year to support of the Commercial Vehicle Information Systems and Networks (CVISN) Deployment program. The Department is requesting \$25 million in its FY 2004 budget request for CVISN deployment. Eligible States would receive grants up to \$2.5 million each for deployment of CVISN core capabilities in the areas of safety information exchange, interstate credentials administration, and roadside electronic screening. States that have already implemented core capabilities could be eligible to receive up to \$1 million of Federal ITS funds for deploying enhanced CVISN capabilities that improve safety and the productivity of commercial vehicle operations, and enhance transportation security.

CONCLUSION

TEA-21 and MCSIA provided a solid foundation for the motor carrier safety program. This reauthorization represents the first opportunity for our new agency to step forward, stand on its own, and chart our course for the future. Critical program characteristics—flexibility, a strong Federal-State partnership, and essential enforcement tools for our Federal programs—should be reinforced.

I look forward to working with you on this critical endeavor to improve highway safety for the motor freight and passenger carrier industries and all highway travelers. Thank you for this opportunity to testify on FMCSA's proposal to achieve this goal. I would be glad to answer any questions you may have.